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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHEN MING,

Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO, SEAN FROST, and DOES 1-
25, inclusive.

Defendants.

Case No. 3:09-cv-01830-CRB

**STIPULATION AND ~~PROPOSED~~
ORDER TO ALLOW PLAINTIFF TO
AMEND HIS COMPLAINT SO THE
CASE MAY BE REMANDED TO STATE
COURT**

INTRODUCTION

Plaintiff Ming Chen respectfully requests this Court recognize that he does not intend to pursue his federal remedies in his pending lawsuit against the City & County of San Francisco, Sean Frost, and Does 1-25. Defendants removed the state-filed case to federal court based on an offending phrase plaintiff seeks to amend from his complaint alleging state claims for battery and a statutory violation under Cal. Civ. Code Section 51.7. The plaintiff seeks to amend the phrase as follows: "Plaintiff suffered general damages including pain and suffering and loss of his rights guaranteed by the ~~United States Constitution~~ laws of the State of California due to the defendants' acts and omissions. . . " The parties now present the below stipulation seeking leave to amend and a request to remand this case back to state court.

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RECITALS

1. On February 9, 2009, plaintiff Chen Ming filed his complaint alleging a violation of 42 U.S.C. Section 1983, Battery, and a violation of Cal. Civ. Code Section 51.7 against the City & County of San Francisco, Sean Frost, and Does 1-25 in federal court and was assigned case number C 09-00590 SBA.

2. Plaintiff dismissed his federal lawsuit without prejudice on February 23, 2009.

3. Plaintiff filed a complaint on February 17, 2009 against the same parties alleging battery and a violation of Cal. Civ. Code Section 51.7 in San Francisco Superior Court, and was assigned case no. CGC-09-485027. In the complaint, the plaintiff inadvertently did not omit the "United States Constitution" from his damages section, and, now seeks to amend as follows: "Plaintiff suffered general damages including pain and suffering and loss of his rights guaranteed by the ~~United States Constitution~~ laws of the State of California due to the defendants' acts and omissions. . . "

4. Defendants removed this case to federal court on April 27, 2009 based on the offending phrase.

5. The parties stipulate that "rights guaranteed by the United States Constitution" be stricken from the complaint and be replaced by "rights guaranteed by the laws of the State of California."

6. Plaintiff hereby abandons and dismisses any and all claims under federal law including without limitation any federal statute or the United States Constitution.

7. The parties further stipulate that because plaintiff is not seeking a claim against these defendants based on federal law, so they respectfully request that this Court remand this case to state court for all further proceedings.

DATED: June 29, 2009

CITY & COUNTY OF SF

By: /s/
Scott Wiener
Attorney for Defendants

Respectfully submitted,

DATED: June 29, 2009

SCOTT LAW FIRM

By: /s/ Lizabeth N. de Vries
LIZABETH N. DE VRIES
Attorney for Plaintiff

ORDER

Based on the stipulation of the parties, and good cause appearing therefor;

IT IS HEREBY ORDERED as follows:

1. The phrase in the complaint “his rights guaranteed by the United States Constitution” is stricken and replaced with “his rights guaranteed by the laws of the State of California.”
2. To the extent that the complaint states a cause of action under federal law, any such federal claim is hereby dismissed.
3. Because there is no federal claim in this case, the case is hereby remanded to the Superior Court of California for the County of San Francisco.

IT IS SO ORDERED.

DATED: July 01, 2009

